

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11143 of 1998

AND

SPECIAL CIVIL APPLICATION NO.11162 OF 1998

AND

SPECIAL CIVIL APPLICATION NO.11169 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT LEASE FINANCING LTD.

Versus

STATE OF GUJARAT

Appearance:

MR KH KAJI for Petitioner

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 29/12/98

ORAL JUDGEMENT

1. These three petitions have been filed for declaring Section 2(36A) and Section 3A of the Gujarat Sales-Tax Act, as ultravires Constitution of India being

beyond the legislative competence of the State Legislature in so far as it purports to tax Inter-State 'specified sales' and has sought that respondents be permanently restrained from taxing such Inter-State 'specified sales'; and the respondents be further directed to refund the tax so collected on such inter-state deemed sales and to restrain the respondents from making any assessment against the petitioner by including such Inter-State 'specified sales' in the taxable turnover.

2. It is contended by learned counsel for the petitioners that under the provisions of the Gujarat Sales Tax Act by considering lease agreements to be specified sales, tax is being imposed on such transactions resulting in sales in the course of interstate trade and commerce where lease agreement in respect of leasing out assets outside the territory of Gujarat results in movement of such goods. He relies for that purpose on the provisions of Sections 2(30C), 2(36A) and Section 3A. He further urges that Section 2(28) which defines term 'sale' and Section 87 which make certain sales and purchase not liable to tax does not exclude the applicability of the Act on specified sales which may result in sale in the course of inter-state trade and commerce.

3. Having carefully considered, we are of the opinion that the contention is without any substance.

4. No provision has been pointed out in the Act which specifies levy of any tax on sales or purchase which takes place in the course of interstate trade and commerce. The definition of sale under Section 2(28) defines 'sale means a sale of goods made within the State for cash or deferred payment. That is to say by the very definition of sale only such sales have been made subject matter of the provisions of the Act which are sale of goods within the State. A specified sale which relates to particular transaction is first a sale falling under the definition of 2(28), then it may be available for treatment under the Act differently than the general sales for the purpose of levy and charge.

5. Section 87 reads as under:

"87. Certain sales and purchases not to be liable to tax.

Nothing in this Act or the rules made thereunder shall be deemed to impose or authorise the

imposition of a tax on any sale or purchase of any goods, where such sale or purchase takes place.

- (i) in the course of inter-state trade or commerce, or
- (ii) outside the state, or
- (iii) In the course of the import of the goods into the territory of India or the export of the goods out of such territory.

and the provisions of this Act and the rules shall be read and construed accordingly.

Explanation:- For the purpose of this Section whether a sale or purchase takes place -

- (a) in the course of inter-state trade or commerce, or
- (b) outside the state, or
- (c) in the course of the import of the goods into territory of India or export of the goods out of such territory.

shall be determined in accordance with the principles specified in Section 3, 4 and 5 of the Central Sales Tax Act, 1956 (LXXIV of 1956)"

6. The provisions are eloquent in themselves to be relatable to Article 286 of the Constitution which reads as under:

"286. Restrictions as to imposition of tax on the sale or purchase of goods.-(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place -

- (a) outside the State; or
- (b) in the course of the import of the goods into, or export of the goods out of the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, -

- (a) a tax on the sale or purchase of goods declared by Parliament by law to be of

special importance in inter-State trade
or commerce;

or

(b) a tax on the sale or purchase of goods,
being a tax of the nature referred to in
sub-clause (b), sub-clause (c) or
sub-clause (d) of clause (29-A) of
Article 366,

be subject to such restrictions and conditions in
regard to the system of levy, rates and other
incidents of the tax as Parliament may by law
specify"

7. Thus by making specific provision under Section 87 that nothing in the Act or the rules made thereunder shall be deemed to impose or authorise the imposition of a tax on any sale or purchase of any goods, where such sale or purchase takes place in the course of inter-state trade or commerce, or outside the state, or in the course of the import of the goods into the territory of India or the export of the goods out of such territory, the Legislature has made it clear that no provision of the Act or rules made thereunder is operative in the field beyond its legislative competence under Entry 54 of the IId List of the 7th Schedule. In the face of this clear provision which is directed to give effect to Art. 286, it is not possible to accept the contention of Mr. Kaji, learned counsel for the petitioner that any part of the Act can be so read as to include sales or purchase which have taken place in the course of inter-state trade or commerce to be subjected to the provisions of the Act.

8. Learned counsel has relied on two decisions in ITC Classic Finance and Services v. Commissioner of Commercial Taxes (1995) 97 STC 330, a Bench decision of the Andhra Pradesh High Court and in Shetty Leasing (India) Ltd. and Anr. v. Union of India and Anr. a decision of the Karnataka High Court (1996) 100 STC 533. In ITC Classic Finance case (supra) the issue was not at all as to the validity of any provisions of the Andhra Pradesh Sales Tax Act. The question directly related to interpreting the nature of leasing transaction where the court having found that such transaction are deemed to be sales in the course of inter-state trade further held that and no tax can be levied under Andhra Pradesh Sales Tax Act on account of Article 286 and 366(29A) of the Constitution of India. It was a case challenging the action of the Sales Tax authorities acting under the Act and was not dealing with the vires of the provisions of the Act. Distinction has to be made between an action being ultravires the statutory provision and a

legislation being beyond the legislative competence.

9. The decision in Shetty Leasing (India) Ltd (supra) of Karnataka High Court was in the light of the provisions of Karnataka Sales Tax Act. That the decision does not refer to any provision of Karnataka Sales Tax Act which was like Section 87 of the Gujarat Sales Tax Act, nor does it refer to definition of 'sale' adopted in Karnataka Act. In the absence of any reference to any comparable provisions of the two different enactments, emanating from different sources, it is not possible to draw any comparison and apply the ratio on analogy. In our opinion, both the decisions are of no assistance to the petitioner.

The petitions therefore have no substance and must fail. The same are dismissed summarily.

(Rajesh Balia, J

(A.R. Dave, J)